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September 27, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

RE: Ex Parte Presentation: CC Docket No. 96-61

Dear Mr. Caton:

On Thursday, September 26, 1996, Tom Thompson, on behalf of the Independent Data Communications Manufacturers Association ("IDCMA"), Bill Warner, on behalf of the Information Technology Association of America ("ITAA"), Jack Petit, on behalf of the Consumer Electronics Retailers Coalition ("CERC"), Trish Nelson, on behalf of Sears, Donald Gilbert, on behalf of the National Retail Federation, and Jonathan Jacob Nadler of Squire, Sanders and Dempsey met with Commissioner Susan Ness and her Senior Legal Advisor, James L. Casserly.

At the meeting, the parties discussed the issues presented in the IDCMA, ITAA, and CERC comments filed in this proceeding. In accordance with Section 1.1206(a) of the Commission's Rules, two copies of this letter, as well as the written material presented at the meeting, are submitted for inclusion in the public record. Due to the lateness of the hour at which this meeting concluded, this letter is being filed on the next business day, Friday, September 27, 1996.

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Please contact the undersigned if you have any questions.

Sincerely,


Jonathan Jacob Nadler

Enclosure

cc: Susan Ness
James L. Casserly

Ex Parte Submission of the Consumer Electronics Retailers Coalition, the Independent Data Communications Manufacturers Association, the Information Technology Association of America, the National Retail Federation, CC Docket No. 96-61

PRESERVATION OF THE CPE NO-BUNDLING RULE IS IN THE PUBLIC INTEREST

I. The CPE No-Bundling Rule Provides Substantial Public Interest Benefits.

- The Rule ensures that users are able to select the CPE that best meets their needs -- whether provided by a carrier, retailer, or independent manufacturer -- rather than having to accept the equipment the carrier chooses to provide.
- The Rule is responsible for the creation of a vibrant independent manufacturing sector, which has promoted innovation while lowering prices.

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II. Elimination of the CPE No-Bundling Rule Would Harm Users.

- Interexchange carriers would be allowed to:
 - require users to purchase carrier-provided CPE;
 - provide deeply subsidized or "free" CPE only to those users that purchase the carrier's transmission service.
- Many independent manufacturers would exit the market; those that remain would become carrier vendors, rather than directly serving end-users.
- Users would lose the ability to obtain CPE from independent consumer electronics retailers.
- IXC's are already seeking further authority to bundle enhanced services, while LECs seek elimination of the CPE No-Bundling Rule in their market.

III. Elimination of the No-Bundling Rule Would Provide No New Benefits.

- No party has demonstrated that the CPE No-Bundling Rule has adversely affected users, or that elimination of the Rule would provide real benefits.
- Elimination of the No-Bundling Rule is not necessary to allow interexchange carriers to offer "one-stop shopping." IXC's can (and do) offer such packages.
- Elimination of the No-Bundling Rule would not be deregulatory. To the contrary, the Commission's proposal would allow IXC's to include CPE as part of their regulated service offerings, while extending Part 68 and network disclosure obligations to additional equipment.

IV. CPE Bundling Would Violate Both U.S. and International Law

- CPE bundling constitutes unlawful discrimination under Section 202 of the Communications Act.
- CPE bundling violates the provisions of GATS and NAFTA guaranteeing the right to attach customer-provided CPE to any public network.
- CPE bundling is inconsistent with Section 304 of the Telecommunications Act, which directs the FCC to extend its anti-bundling policy to broadband networks.

V. The Record is Too Thin to Support Elimination of the No-Bundling Rule

- Only a handful of parties addressed the merits of the Commission's CPE bundling proposal.
- The Notice did not solicit comments regarding enhanced services bundling.